THE NEW SCHOOLS OF HEALING.—"All that a man hath will he give for his life" is a profound truth which will in a large measure explain the great number of the schools of healing which have sprung up in recent years. It is to this natural anxiety rather than to the inherent unrest prevailing to-day that we may attribute this great variety and diversity of the methods in preserving existence and curing its ills. Whatever surprise and ridicule were manifested at the beginning of these movements, the readiness with which the doctrines are accepted and the intelligence of those who have become adherents to what appear peculiar tenets, have commanded considerate attention. But the most serious problem is the stand which the courts must take with respect to them, since they cross with some frequency the orbit of the law.

An important principle that has emerged from the decisions is that one who holds himself out as a healer of a new method must treat patients with skill—a skill not measured by the rules of his own method, but by that of the general physician. So a clairvoyant healer will be liable for malpractice where he does not use the ordinary skill of a physician of the recognized school in that vicinity. *Nelson* v. *Harrington,* 72 Wis. 591. And the state, in order to protect the public, may require that those attempting cures by osteopathy shall have certain qualifications. *State* v. *Gravett,* 65 Ohio St. 289; *State* v. *McKnight,* 131 N. C. 723. (But see as to a masseur, *State* v. *Biggs,* 133 N. C. 729, 98 Am. St. R. 731 and *note.*) While magnetic healing is not a fraud within the meaning of the postal laws, *American School of Magnetic Healing* v. *McAnnulty,* 187 U. S. 94, yet it has been most emphatically held that the only proof necessary for recovery for injury sustained at the hands of a magnetic healer is to show that the treatment given the plaintiff is not proper, judged by the usual standard of medical skillfulness. *Lougan* v. *Weltmer,* — Mo. —, 79 S. W. 655, 64 L. R. A. 969. The position as regards Christian Science is even more severe. See 2 MICHIGAN LAW REVIEW, 149, 212.

Now a new difficulty has arisen. In *Meyer* v. *Knott* (1904), — Mich. —, 100 N. W. Rep. 907, 11 Detroit Legal News 436, the plaintiff brought action to recover compensation for time spent in the attempt to learn to "cure disease through the power of Christian Science Mind Healing," alleging that defendant was not a true follower of that creed because three years prior defendant had superfluous hair removed from her face by electrical treatment. This evidence was considered, and it was held that defendant could still claim her status as a Christian Scientist, and plaintiff, therefore, could not recover. In other words the court has been asked to determine who is a member of a certain sect according to the qualifications made requisite by the sect itself. This opens another field for legal inquiry, and its development will be watched with curiosity.

WHEN THE EXERCISE OF JUDICIAL DISCRETION IS NOT DUE PROCESS OF LAW.—In 1896 the legislature of Vermont passed an act that provides that "the Court of Chancery, in its discretion, upon the petition of a married woman, may empower her to convey her real estate by separate deed" as

effectually as if the deed were executed by herself and her husband. This act was successfully challenged as unconstitutional in the recent case of *Hubbard* v. *Hubbard* (Sept. 15, 1904), — 58 Atl. Rep. 969. Susan W. Hubbard at the time of her marriage to Asahel H. Hubbard owned certain real estate that she held by ordinary conveyance and not to her separate use. The parties were married in 1899, lived together for about a year when they separated, apparently through the fault of the husband. The wife needing the proceeds of her realty for her support and in order that she might meet her obligations, bargained to sell her land, but her husband refused to join in the deed. She thereupon appealed to the Court of Chancery for authority to convey by separate deed, basing her application upon the said act of 1896. The court below granted the prayer of the petition, whereupon an appeal was taken to the Supreme Court, which resulted in a reversal of the decree of the lower court and a dismissal of the cause, the Supreme Court declaring the act in question to be unconstitutional.

In Vermont the common law rule that gives the husband a freehold estate during their joint lives in the lands of the wife that she held at the time of the marriage, except such as she held to her sole and separate use, is in full force and effect. In that state, then, the husband has a property interest in the lands of his wife that are not held to her separate use. It is an interest that is recognized and protected by statute, for the wife cannot convey or mortgage such real estate "except by deed duly executed by herself and her husband." V. S. 2646. It is an interest that cannot be taken away by any court without due process of law. The effect of the decree below would be to deprive the husband of this interest; and the inquiry of the Supreme Court is as to whether or not the act in question provides or contemplates due process of law.

The act declares in effect that the husband's interest may be taken from him in the discretion of the Court of Chancery. No conditions are given under which the discretion must be exercised other than that it must be upon the petition of the wife. No facts are stated that must exist and serve as guides to the court in the exercise of discretion. The act is entirely different from another in the same state that provides for the sale and conveyance, under the authority of the chancellor, by the wife of her real estate whenever the husband "is incapacitated by intemperance, insanity or otherwise for supporting his family, or deserts, neglects or abandons his wife, or by ill-usage or criminal conduct gives her cause to live apart from him, or is sentenced to or confined in state prison." V. S. 2650. Here we have clearly defined limits for the exercise of discretion. But the petitioner in the case under consideration does not base her claim upon this statute. Her "petition is brought and the decree rendered strictly under and pursuant" to the said act of 1896. The Supreme Court, after declaring that "legitimate judicial discretion is, without doubt, due process of law," and referring to the fact that it is usually exercised in matters of procedure, though instances of its proper exercise are not wanting in the field of substantive law if the rules and conditions governing its exercise are well fixed and determined, concludes that the right of a person to retain his estate cannot properly be dependant upon

the decision of a magistrate that is based solely upon his own sense of fairness and justice. "The grant of discretionary power in the legal sense," says the court, "apparently implies the existence of certain well-understood principles within which it should be exercised. But when a statute declares that a husband's property may be taken from him and bestowed upon his wife in the discretion of the chancellor, what are the well-understool principles which are to govern him in the exercise of his discretion?" After referring to the fact that the legislature has undertaken in another section of the statute (V. S. 2650) to provide a law for the subject wherein it carefully defines the circumstances under which the wife may be given the authority to convey by separate deed, the court continues: "When the chancellor is bidden to exercise his discretion beyond and regardless of these circumstances, how is he to judge? He has no law to govern him, because the law is against divesting the husband of his estate. Is he to make a law? Is he to formulate a rule governing such cases? Then he becomes the legislature for that case. And is one chancellor to make one rule and another chancellor a different rule? Then we live under a government of men, not of laws. Is it a case for the exercise of discretion, or is it not rather a field wherein the rights of men and women must be regulated by positive law? Is it not too much to ask that one's right to hold his estate should be made to depend upon its appearing fair and just to a chancellor that he should do so, merely in view of the circumstances existing between himself and another?"

The decision in this case is undoubtedly correct in view of the substantial interest that the husband has in the real estate of his wife in the jurisdiction in which the case arose. His interest exists by virtue of the marital relation, and in order that the interest may be divested and the conveyance of the wife good, he must not only execute the deed jointly with the wife, but he must be named in the deed as grantor. *Dietrich* v. *Hutchinson,* 73 Vt. 134, 50 Atl. Rep. 810, 87 Am. St. Rep. 698. But in some jurisdictions in which the husband does not have a freehold interest in the lands of his wife, he is required to join in her conveyance simply for the purpose of manifesting his consent thereto. Where this is the case, it is not usually required that he be described as grantor in the conveyance, for he has nothing to grant, but it is generally held to be sufficient if he executes the conveyance with his wife. See *Bray* v. *Clapp,* 80 Me. 277, 13 Atl. Rep. 900, 6 Am. St. Rep. 197; *Chapman* v. *Miller,* 128 Mass. 269; *Pease* v. *Bridge,* 49 Conn. 58; *Thompson* v. *Lovrein,* 82 Penn. St. 432; *Clark* v. *Clark,* 16 Oregon, 224, 18 Pac. Rep. 1. It is suggested that in such jurisdictions, a statute like the one under examination would be constitutional, as its enforcement could not result in depriving a person of property rights without due process of law.

MANDAMUS TO COMPEL THE INSTALLATION OF A TELEPHONE IN A BAWDY HOUSE DENIED.—In the recent case of *Goodwin* v. *Carolina Telephone and Telegraph Co.* (Oct. 18, 1904), — N. C. —, 48 S. E. Rep. 636, the question of limitations upon the right to compel the furnishing of public utilities by quasi-public corporations is discussed, and the conclusion is very properly